

# **Exhibit E**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

SECURITIES AND EXCHANGE  
COMMISSION,

Plaintiff,

RIPPLE LABS INC., BRADLEY  
GARLINGHOUSE, AND CHRISTIAN A.  
LARSEN,

Defendants.

20 Civ. 10832 (AT)

**EXPERT REBUTTAL REPORT OF DANIEL R. FISCHER**

**November 12, 2021**

## I. QUALIFICATIONS

1. I am President of Compass Lexecon, a consulting firm that specializes in the application of economics to a variety of legal and regulatory issues. I am also the Lee and Brena Freeman Professor of Law and Business Emeritus at The University of Chicago Law School. I have served previously as Dean of The University of Chicago Law School, Director of the Law and Economics Program at The University of Chicago, and as Professor of Law and Business at The University of Chicago Graduate School of Business, the Kellogg School of Management at Northwestern University, and the Northwestern University Law School.

2. Both my research and my teaching have concerned the economics of corporate law and financial markets. I have published approximately fifty articles in leading legal and economics journals and am co-author, with Judge Frank Easterbrook of the Seventh Circuit Court of Appeals, of the book *The Economic Structure of Corporate Law* (Harvard University Press, 1991). Courts of all levels, including the Supreme Court of the United States, have cited my articles as authoritative. I have written and testified extensively about uses of event studies. My curriculum vitae, which contains a list of my publications, is attached hereto as Appendix A.

3. I have served as a consultant or adviser on economic issues to, among others, the United States Department of Justice, the United States Securities and Exchange Commission, the National Association of Securities Dealers, the New York Stock Exchange, the Chicago Board of Trade, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the United States Department of Labor, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Federal Trade Commission.

4. I am a member of the American Economic Association and the American Finance Association. I am also a former Trustee of the Becker Friedman Institute, a former member of the Board of Directors of the Center for the Study of the Economy and the State at The University of Chicago, and former Chairman of the American Association of Law Schools' Section on Law and Economics. I have testified as an expert witness in multiple proceedings in federal and state courts across the country, as detailed in Appendix A.

## II. BACKGROUND

5. I understand that the relevant background is as follows. The XRP Ledger is a public blockchain technology that was developed by David Schwartz, Jed McCaleb, and Arthur Britto between 2011 and June 2012.<sup>1</sup> XRP is the native digital asset of the XRP Ledger.<sup>2</sup> In September 2012, the technology company n/k/a Ripple Labs Inc. ("Ripple" or the "Company"), was founded to "build use cases for the digital asset" XRP.<sup>3</sup> Shortly after the formation of the Company, the founders contributed 80 billion units of XRP to the Company, or 80% of the 100 billion units in existence.<sup>4</sup>

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<sup>1</sup> See <https://xrpl.org/xrp-ledger-overview.html> and <https://xrpl.org/history.html>.

<sup>2</sup> See <https://xrpl.org/xrp-overview.html> and <https://xrpl.org/history.html>.

<sup>3</sup> See <https://xrpl.org/history.html>. I understand that the Company was initially named NewCoin and then OpenCoin before changing its name to Ripple in 2013. I also understand that the term "Ripple" initially stood for "the open-source project, the unique consensus ledger (Ripple Consensus Ledger), transaction protocol (Ripple Transaction Protocol or RTXP), the network (Ripple network), and the digital asset (known as 'ripples')" and that "[f]or clarity, the community simply started calling the digital asset by its currency code, 'XRP'." *Id.*

<sup>4</sup> See <https://xrpl.org/xrp-overview.html> and <https://xrpl.org/history.html>. In December 2017, Ripple placed 55 billion units of XRP, or 55% of the 100 billion units in existence, into a series of escrows, which provided an upper limit on the amount of new XRP that could be brought into circulation. See <https://ripple.com/insights/explanation-ripples-xrp-escrow/>.

6. The Securities and Exchange Commission (“SEC”) has brought this action against Ripple, Bradley Garlinghouse, and Chris Larsen (“Defendants”) for alleged violations of Section 5(a) and (c) of the Securities Act of 1933 (the “Securities Act”).<sup>5</sup> Specifically, the SEC argues that “XRP was an investment contract and therefore a security subject to the registration requirements of the federal securities laws”<sup>6</sup> and, therefore, Ripple engaged in “a years-long unregistered offering of securities [...] by selling XRP without providing the type of financial and managerial information typically provided in registration statements and subsequent period and current filings.”<sup>7, 8</sup>

7. In *SEC v. W. J. Howey Co.*, the Supreme Court ruled that “an investment contract for purposes of the Securities Act means a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of

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<sup>5</sup> See *Securities and Exchange Commission v. Ripple Labs, et al.*, First Amended Complaint filed February 18, 2021 (“Amended Complaint”), p. 1 and ¶ 9.

<sup>6</sup> Amended Complaint, ¶ 231.

<sup>7</sup> Amended Complaint, ¶ 5.

<sup>8</sup> I understand that “security” is defined in Section 2(a)(1) of the Securities Act as follows: “The term ‘security’ means any note, stock, treasury stock, security future, security-based swap, bond, debenture, evidence of indebtedness, certificate of interest or participation in any profit-sharing agreement, collateral-trust certificate, preorganization certificate or subscription, transferable share, **investment contract**, voting-trust certificate, certificate of deposit for a security, fractional undivided interest in oil, gas, or other mineral rights, any put, call, straddle, option, or privilege on any security, certificate of deposit, or group or index of securities (including any interest therein or based on the value thereof), or any put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency, or, in general, any interest or instrument commonly known as a ‘security’, or any certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.” (Emphasis added.)

the promoter or a third party.”<sup>9</sup> I understand that this decision is commonly referred to as the *Howey* Test.<sup>10</sup>

8. The SEC submitted the initial report of Dr. Albert Metz on October 4, 2021.<sup>11</sup> In his report, Dr. Metz states that he “understand[s] that the XRP token is not a claim on the assets or earnings of Ripple Labs and that Ripple Labs maintains that market participants do not view Ripple Labs’ efforts as relevant to the XRP market price.”<sup>12</sup> He also states that he “[has] been asked by the SEC’s litigation counsel to test whether news about Ripple Labs and its actions is associated with statistically significant XRP price changes.”<sup>13</sup>

9. Dr. Metz uses an event study methodology to “test whether XRP returns are associated with news about Ripple,”<sup>14</sup> specifically whether news about Ripple coincide with statistically significant price changes in XRP “more frequently than random chance could explain.”<sup>15</sup> Dr. Metz argues that “[i]f there is a relationship between Ripple’s actions and XRP returns,” then he “would expect that (presumptively positive) news would be significantly associated with positive returns” and “that such news would [not] be significantly associated with negative returns[.]”<sup>16</sup>

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<sup>9</sup> *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946).

<sup>10</sup> “The test is whether the scheme involves an investment of money in a common enterprise with profits to come solely from the efforts of others. If that test be satisfied, it is immaterial whether the enterprise is speculative or non-speculative or whether there is a sale of property with or without intrinsic value.” *SEC v. W. J. Howey Co.*, 328 U.S. 293 (1946).

<sup>11</sup> See Expert Report of Albert Metz, Ph.D., October 4, 2021 (“Metz Report”).

<sup>12</sup> Metz Report, ¶ 30.

<sup>13</sup> Metz Report, ¶ 30.

<sup>14</sup> Metz Report, ¶ 28.

<sup>15</sup> Metz Report, ¶ 31.

<sup>16</sup> Metz Report, ¶ 64.

10. To identify “pertinent” news to test, Dr. Metz collects “news which Ripple Labs has identified to be important by virtue of (i) having issued a press release about the event, or (ii) having written about it on its Insights/News page, or (iii) having linked to a third-party news outlet in its curated Newsroom page.”<sup>17</sup> He then classifies these announcements into various categories based on his own “judgment.”<sup>18</sup> In total, Dr. Metz identifies 514 events<sup>19</sup> but focuses his analysis on “news announcements in [] categories related more directly to XRP[.]”<sup>20, 21</sup>

11. Specifically, Dr. Metz tests for statistically significant correlation between XRP price increases and the following categories of announcements that he assumes are more directly related to XRP: (1) Milestones (“key event[s] in the history of Ripple Labs not related to products or customers”); (2) Trading Platform Listings (“announcement[s] that XRP is available for trading on a new digital asset trading platform”); (3) Customer & Product Developments (“announcement[s] related to new customer relationship[s] ... or products, including enhancements to the XRP ledger protocol”); (4) Ripple Commercialization Initiatives (“initiative[s] launched by Ripple Labs primarily described as being related to the commercialization or promotion of Ripple’s products or technology in the XRP ecosystem”); and (5) “Select Categories,” which combines announcements in the forgoing categories and

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<sup>17</sup> Metz Report, ¶ 48.a.

<sup>18</sup> See Metz Report, ¶ 48.b.

<sup>19</sup> See Metz Report, ¶ 49. See also, Metz Report, Appendix C.

<sup>20</sup> Metz Report, ¶ 50.

<sup>21</sup> Dr. Metz also excludes announcements from his analysis if “the announcement may substantially repeat a previous announcement” or “the nature of the announcement may not have a particular directional implication for XRP prices, even assuming the hypothesis of independence is false.” Metz Report, ¶ 48.c.

Acquisitions & Investments (“announcement[s] of an acquisition or investment made by Ripple Labs, including through its development arm Xpring”).<sup>22, 23</sup>

12. To test for significant correlation between XRP price increases and these announcements, Dr. Metz uses an event study analysis, which has four steps:

- (i) First, Dr. Metz specifies the regression model of XRP returns. He considers 20 different regression models and estimates each model using 180-day estimation windows.<sup>24</sup>
- (ii) Second, Dr. Metz specifies the window over which to measure the changes in XRP prices following a news event, i.e., the “event window.” He considers a 1-day event window (date t), a 2-day event window (dates t and t+1), and a 3-day event window (dates t, t+1, and t+2).<sup>25</sup>
- (iii) Third, Dr. Metz estimates the (cumulative) abnormal returns for each trading day over the corresponding event window and then determines which are statistically

<sup>22</sup> Metz Report, ¶ 48.b. See also, Metz Report, Figure 1 (p. 3) and Appendix E, pp. 1-7, 10.

<sup>23</sup> Dr. Metz also tests the significance of correlation between XRP price increases and the two other categories of announcements, which he assumes are less related to XRP: (i) Other Initiatives and (ii) Office & Staff Announcement. See Metz Report, ¶¶ 48.b, 91-97 and Appendix E, pp. 8-9. Additionally, I note that Dr. Metz identifies but does not analyze announcements in the following categories, presumably because he assumes these announcements are even less related to XRP: (i) Case Study; (ii) Charity; (iii) Corporate Activity & Announcement; (iv) Litigation; (v) Market Commentary & Company Overview; (vi) Markets Report; and (vii) Miscellaneous. See Metz Report, ¶¶ 48.b, 50. “For certain other categories, such as general market commentary (often written by third parties and which does not break new information), it seems self-evident that there should be no meaningful connection with the XRP market in any case, hence testing such categories is not informative.” *Id.*, ¶ 50.

<sup>24</sup> See Metz Report, ¶ 60. See also, *id.*, Section V.B (¶¶ 39-43) and Figure 7 (p. 19).

<sup>25</sup> See Metz Report, ¶ 61. Dr. Metz states that he “conservatively limit[s] [his] analysis to a three day window – meaning, [he] associate[s] price reactions to a news event on date t only if [he] find[s] evidence of statistically significant price movements in the first three days.” *Id.*, ¶ 38.



significant using a parametric approach and a nonparametric approach.<sup>26</sup> He evaluates the statistical significance of abnormal returns at the 5% significance level in a one-sided test and a two-sided test.<sup>27</sup> Dr. Metz classifies date *t* as “significantly positive” if any of its cumulative returns over the 1-, 2-, or 3-day event windows are statistically significant and positive and none of its cumulative returns over those windows are statistically significant and negative.<sup>28</sup>

- (iv) Finally, Dr. Metz examines the interaction between the set of news days he identified and the set of days with significantly positive XRP returns.<sup>29</sup>

13. In other words, Dr. Metz’s analysis “selects different categories of news event, determines how many of those correspond to significantly positive XRP returns according to different regression models [he] consider[s], and then calculates how likely that outcome is.”<sup>30</sup> Based on his analysis, Dr. Metz concludes that “XRP prices react to certain news and public statements about Ripple’s actions,” particularly “important milestones in the history of [Ripple] and [] announcements more directly related to XRP.”<sup>31</sup>

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<sup>26</sup> See Metz Report, ¶ 62. Dr. Metz’s parametric approach “assesses the abnormal return against the significant thresholds from the t-distribution (approximately 1.64 for a one-sided test and 1.96 for a two-sided test),” while his nonparametric approach “assesses the abnormal return against the distribution of standardized abnormal returns observed over the 180 days used to estimate the regression model.” Metz Report, ¶¶ 62.a-62.b.

<sup>27</sup> “The ‘one-sided’ test classifies a return as significant if there is only a 5% probability of drawing a greater (more positive) return. The ‘two-sided’ test classifies a return as significant if there is only a 5% probability of drawing a more extreme (whether positive or negative) return. When using the ‘two-sided’ standard, I continue to restrict myself only to positive returns, unless otherwise noted.” Metz Report, note 65.

<sup>28</sup> See Metz Report, ¶ 63.

<sup>29</sup> See Metz Report, ¶ 64.

<sup>30</sup> Metz Report, ¶ 58.

<sup>31</sup> Metz Report, ¶ 12.a.

### **III. ASSIGNMENT AND SUMMARY OF CONCLUSIONS**

14. I have been asked by counsel for Ripple to review, evaluate, and respond to Dr. Metz's event study methodology from an economics perspective. Based on my review of the economic evidence, I have concluded that Dr. Metz's analysis is fundamentally flawed for multiple reasons and provides no support for the SEC's claim that XRP is a security:

- (i) First, the findings of Dr. Metz's event study methodology do not demonstrate that XRP holders profit solely or primarily from the efforts of Ripple.
- (ii) Second, Dr. Metz misinterprets his own findings by failing to recognize that many of the announcements that he finds to be statistically significant are confounded.
- (iii) Third, Dr. Metz fails to appreciate the significance of his own admission that XRP did not trade in an efficient market.
- (iv) Fourth, Dr. Metz fails to provide any explanation as to why his event study methodology would shed any light on whether XRP holders are engaged in a "common enterprise" with Ripple.

15. I elaborate upon and provide the bases for my opinions in Section IV of this report. In performing this work, I have received assistance from Compass Lexecon personnel working under my supervision. Compass Lexecon is being compensated for the time spent by Compass Lexecon personnel at their customary hourly rates. My current hourly rate is \$1,750. My compensation is not contingent on the analyses we conducted or the opinions I offer in this report. A list of materials we have relied upon in connection with the preparation of this report is attached as Appendix B.

#### IV. DR. METZ'S ANALYSIS IS FUNDAMENTALLY FLAWED AND PROVIDES NO SUPPORT FOR THE SEC'S CLAIM THAT XRP IS A SECURITY

16. From an economics perspective, holders of a security issued by a company have a claim on some of the cash flows generated by a set of assets or, in certain states of the world, a claim on the assets themselves.<sup>32</sup> For example, stock and bond holders have a claim on the cash flows and assets of the underlying company. However, as Dr. Metz acknowledges, and the SEC has admitted,<sup>33</sup> holders of XRP do not have a claim on any of Ripple's cash flows or assets in any state of the world.<sup>34</sup> Instead, Dr. Metz uses an event study methodology to "test whether XRP returns are associated with news about Ripple,"<sup>35</sup> and, based on his analysis, concludes that XRP had statistically significant returns following some (but not all) announcements<sup>36</sup> made by Ripple.<sup>37</sup> For the reasons discussed below, I have concluded that Dr. Metz's analysis is

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<sup>32</sup> See e.g., Aswath Damodaran, "Approaches to Valuation," in *Investment Valuation: Tools and Techniques for Determining the Value of Any Asset* (3rd Ed., John Wiley & Sons, 1996), Chapter 2, pp. 11-26. "[D]iscounted cash flow valuation ... is the foundation on which all other valuation approaches are built .... This approach has its foundation in the present value rule, where the value of any asset is the present value of expected future cash flows on it." *Id.*, p. 11.

<sup>33</sup> See Plaintiff's Answers and Objections to Defendants' First Set of Requests for Admission, dated July 16, 2021, pp. 19-20: "[T]he Commission admits that holders of XRP are not entitled to receive any return of principal, dividend, interest, rent, royalties, license payments, lease payments, or any other payment or consideration from Ripple, based solely on their status as a holder of XRP .... [T]he Commission admits that Ripple is not obligated to share any return of principal, dividend, rent, royalties, license payments, lease payments, or any other payment or consideration to any holder of XRP, based solely on his or her status as a holder of XRP."

<sup>34</sup> See Metz Report, ¶ 30: "I understand that the XRP token is not a claim on the assets or earnings of Ripple Labs."

<sup>35</sup> Metz Report, ¶ 28.

<sup>36</sup> See *infra*, Section IV.A.

<sup>37</sup> Metz Report, ¶ 12.a.

fundamentally flawed and provides no support for the SEC’s claim that XRP is a security under the *Howey* Test.

**A. The Findings of Dr. Metz’s Event Study Methodology Do Not Demonstrate that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

17. Dr. Metz claims that “across major milestones in the history of Ripple Labs and across those categories of news more directly related to XRP’s proposed use cases, there is statistically significant evidence that the price of XRP reacts to news of Ripple’s actions.”<sup>38</sup>

While I do not agree with Dr. Metz’s identification and categorization of event days, for brevity’s sake, in this section, I refer to the event days with announcements analyzed in Dr. Metz’s “Select Categories” test as “days with news about Ripple’s efforts” and to all other days as “days with no news about Ripple’s efforts.”<sup>39</sup>

18. Even if one were to assume that the event days analyzed in Dr. Metz’s “Select Categories” test were solely or primarily related to the efforts of Ripple—which, as I discuss in Section IV.B *infra*, they are not—the findings of his event study methodology do not demonstrate that XRP holders profit solely or primarily from the efforts of Ripple. In fact, taken at face value, Dr. Metz’s analysis finds that (i) most days with significantly positive XRP returns

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<sup>38</sup> Metz Report, ¶ 65.

<sup>39</sup> As discussed above, Dr. Metz identifies other categories of announcements but does not analyze those announcements in his “Select Categories” test—presumably because Dr. Metz assumes those categories of announcements are not directly related to XRP and/or do not disclose new information about Ripple’s efforts. *See supra*, note 20. Moreover, as I discuss in Section IV.B *infra*, even the announcements that Dr. Metz analyzes in his “Select Categories” test confound information about Ripple’s efforts with information about market conditions for XRP.

had no news about Ripple's efforts and (ii) most days with news about Ripple's efforts did not have significantly positive XRP returns.

19. In his "Select Categories" test, Dr. Metz analyzes 105 event days<sup>40</sup> with announcements in any of the following categories: (1) Milestones, (2) Trading Platform Listings, (3) Customer & Product Developments, (4) Ripple Commercialization Initiatives, and (5) Acquisitions & Investments.<sup>41</sup> Between May 5, 2014 (the first event day tested by Dr. Metz) and October 28, 2020 (the last event day tested by Dr. Metz), there were 2,369 total trading days.<sup>42</sup> Dr. Metz estimates abnormal returns for each of these 2,369 trading days using 20 regression models and then evaluates the abnormal returns at the 5% significance level using a parametric and nonparametric approach.<sup>43, 44</sup>

20. Using his event study methodology, Dr. Metz's "Select Categories" test identifies 76 to 267 days with significantly positive XRP returns and 15 to 31 event days where news about Ripple's efforts corresponded with significantly positive XRP returns. See Exhibit 1. As the exhibit shows, these findings demonstrate that (i) 76.3% to 89.5% of days with significantly positive XRP returns had no news about Ripple's efforts analyzed by Dr. Metz and (ii) 70.5% to 84.8% of days with news about Ripple's efforts analyzed by Dr. Metz did not have significantly

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<sup>40</sup> See *infra*, note 44.

<sup>41</sup> See Metz Report, Figure 1 (p. 3) and ¶ 98. See also Metz Report, Appendix E, p. 10.

<sup>42</sup> See *infra*, note 44.

<sup>43</sup> See Metz Report, ¶¶ 42, 54, 60-63. For both the parametric and nonparametric approach, Dr. Metz uses a one-sided test and two-sided test.

<sup>44</sup> In eight out of 20 regression models, Dr. Metz controls for the returns of Ether (ETH), which only has pricing data beginning on August 7, 2015. For these models, Dr. Metz cannot estimate abnormal returns for earlier trading days and, therefore, he cannot test some of the earlier event days. See Metz Report, note 46. Using these models, Dr. Metz estimated abnormal returns for 1,725 to 1,726 trading days (depending on the model specification) and tested 90 event days. See Exhibit 1.

positive XRP returns. See Exhibit 1. In other words, taken at face value, the findings of Dr. Metz's event study methodology do not demonstrate that XRP holders profit solely or primarily from the efforts of Ripple.

**B. Dr. Metz Misinterprets His Own Findings by Failing to Recognize That Many of the Announcements That He Finds to Be Statistically Significant are Confounded**

21. Dr. Metz claims that his "results indicate that the price of XRP reacts to the news about actions of Ripple Labs" and, therefore, he "reject[s] the hypothesis that XRP prices are independent of Ripple Labs."<sup>45, 46</sup> However, the announcements that Dr. Metz analyzed confound information about Ripple's efforts with information about market conditions for XRP. Such confounding information include information related to the expected supply and demand for XRP and information about the decisions and expectations of market participants other than Ripple, none of which is solely or primarily related to Ripple's efforts or under Ripple's direct or indirect control. In other words, Dr. Metz's analysis erroneously assumes that statistically significant XRP returns following these announcements are always (and only) related to information about Ripple's efforts and never related to information about market conditions for XRP.

22. The fact that statistically significant XRP returns are correlated with announcements relating to the expected supply and demand for XRP or other market conditions does not establish that XRP is a security. Companies can and routinely do make announcements

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<sup>45</sup> Metz Report, ¶ 67.

<sup>46</sup> Specifically, Dr. Metz concludes that significantly positive XRP returns are correlated with the following categories of announcements: (1) Milestones, (2) Trading Platform Listings, (3) Customer & Product, (4) Ripple Commercialization Initiatives, and (5) "Select Categories," which combines announcements in the forgoing categories and Acquisitions & Investments. See e.g., Metz Report, Figure 1 (p. 3) and Sections VI.A-VI.D, VI.F.

that relate to the supply and demand for a commodity or good that then affect the price of the commodity or good. For example, if an oil producer announces a new oil pipeline, one could imagine that the local oil prices would be affected at the start of the pipeline (due to increased demand) and at the end of the pipeline (due to increased supply). These announcements contain information about the company's efforts as well as information about market conditions for a commodity or good, but this correlation does not make the commodity or good a security. While Ripple (because it holds a substantial amount of XRP) and holders of XRP can both simultaneously gain or lose from XRP price changes, an oil producer and oil investors (both of which hold oil) could likewise gain or lose at the same time due to oil price movements. But it is clear that an oil producer and oil investors are not in a common enterprise and oil is not a security.

23. It is evident that the “news announcements in [] categories related more directly to XRP”<sup>47</sup> that Dr. Metz analyzes provide information relating to the expected supply and demand for XRP and/or information about the decisions and expectations of market participants unaffiliated with Ripple, neither of which is solely nor primarily related to Ripple's efforts.

- (i) “Milestones,” such as early financing rounds for equity investments in Ripple, provide information about the expectations of Ripple's sophisticated institutional investors about the state of the market for XRP, since Ripple holds a large quantity of XRP. They also provide information about the expected supply of XRP, to the extent that market participants would expect Ripple to sell fewer XRP tokens to fund its business operations after completing an equity financing round. Similarly, announcements relating to Ripple's decision to escrow 55 billion XRP tokens, which Dr. Metz categorizes as milestone events, provide information

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<sup>47</sup> Metz Report, ¶ 50.

about the expected supply of XRP.<sup>48</sup> Ripple's receiving a "New York's First BitLicense for an Institutional Use Case of Digital Assets" provides information about the expected demand for XRP and about the decisions and expectations of cryptocurrency regulators.

- (ii) "Trading Platform Listings" often occurred without any involvement by Ripple, as Dr. Metz acknowledges,<sup>49</sup> and provide information about the expected supply and demand for XRP from cryptocurrency market participants currently active on those platforms and those that will be active on those platforms in the future. Moreover, the fact that a platform decides to list XRP provides positive signals about the platform's expectation of future market conditions for XRP and is not solely or primarily due to Ripple's efforts. Indeed, other cryptocurrencies such as bitcoin are listed on platforms without the effort of a company like Ripple.<sup>50</sup>
- (iii) "Customers & Product Developments" are announcements about banks and other financial companies intending to use Ripple software.<sup>51</sup> These events again provide information about the decisions and expectations of market participants, as well as information about the expected supply and demand for XRP from users of the XRP Ledger. Indeed, Dr. Metz admits that "it is not always clear if Ripple is an active participant or not"<sup>52</sup> regarding these announcements, let alone whether the action is solely or primarily due to Ripple's efforts.
- (iv) "Ripple Commercialization Initiatives" are announcements about Ripple launching initiatives "described as commercializing or promoting its technology and payment solutions, including some described as creating use-cases for XRP."<sup>53</sup> As with customers and product developments, these events provide information about the market conditions for XRP and, when these announcements

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<sup>48</sup> Metz Report, Figure 13 (p. 30).

<sup>49</sup> Of the 11 announcements identified by Dr. Metz, he acknowledges that only six announcements involved Ripple actions. See Metz Report, Figure 16 (p. 34).

<sup>50</sup> Metz Report, Figure 16 (p. 34).

<sup>51</sup> See Metz Report, ¶¶ 48.b, 83-85.

<sup>52</sup> Metz Report, ¶ 83.

<sup>53</sup> Metz Report, ¶ 88.



relate to partnerships with other market participants, provide information about the decisions and expectations of those market participants.<sup>54</sup>

24. In contrast, when Dr. Metz analyzes categories of announcements that are less likely to confound information about supply and demand for XRP and/or market conditions for XRP, his event study methodology does not find a statistically significant correlation between XRP price increases and those announcements. As discussed above, Dr. Metz tests the significance of correlation between XRP price increases and two categories of announcements that he assumes are less related to XRP: (i) Other Initiatives (“initiative[s] not primarily described as being related to the commercialization or promotion of Ripple’s products or technology in the XRP ecosystem”<sup>55</sup>) and Office & Staff Announcements (“announcement[s] of executive staff changes or the opening of a new office”<sup>56</sup>).<sup>57</sup> Unsurprisingly, Dr. Metz finds that XRP prices do not react significantly to these announcements, because these announcements are unlikely to provide information about market conditions for XRP and Ripple is not engaged in a common enterprise to share cash flows or assets with holders of XRP.

25. The announcements that Dr. Metz analyzes and finds to be correlated with significantly positive XRP returns may be further confounded by other announcements that fall on or near the event day, which may not be related to Ripple’s efforts. As shown in Exhibit 2, for the 105 event days that Dr. Metz analyzes in his “Select Categories” test, on average,

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<sup>54</sup> For example, announcement about banks launching a “Global Payments Steering Group.” Metz Report, ¶ 88 and note 80.

<sup>55</sup> Metz Report, ¶ 48.b.

<sup>56</sup> Metz Report, ¶ 48.b.

<sup>57</sup> See supra, note 22. See also, Metz Report, ¶¶ 91-97.

Dr. Metz has identified 5 other announcements within 10 days of the event day,<sup>58</sup> 4 other announcements within 7 days of the event day, and 2 other announcements within 3 days of the event day. In other words, Dr. Metz's event study methodology cannot disentangle the impact of contemporaneous announcements on XRP prices, especially since, as Dr. Metz acknowledges, XRP did not trade in an efficient market.<sup>59</sup>

26. In summary, Dr. Metz's analysis cannot establish that XRP prices reacted solely or primarily to information about Ripple's efforts<sup>60</sup> because the announcements that Dr. Metz analyzed (i) confound information about Ripple's efforts with information about market conditions for XRP and/or (ii) may be confounded by other contemporaneous announcements.

**C. Dr. Metz Fails to Appreciate the Significance of His Own Admission That XRP Did Not Trade in an Efficient Market**

27. In financial economics, capital markets are called "efficient" if market prices fully reflect available information.<sup>61</sup> When an event study is used to measure the impact of certain events on market prices, it is explicitly assumed that the market is efficient, at least with respect to publicly available information.<sup>62</sup> In other words, it is assumed that market prices adjust to

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<sup>58</sup> One of the articles Dr. Metz cites regarding event studies in cryptocurrency markets use a 20-day event window. See Metz Report, note 42.

<sup>59</sup> As discussed in more detail below, Dr. Metz fails to appreciate the significance of his own admission that XRP did not trade in an efficient market. See infra, Section IV.C.

<sup>60</sup> As discussed above, the *Howey* Test's definition of an investment contract is "a contract, transaction or scheme whereby a person invests his money in a common enterprise and is led to expect profits solely from the efforts of the promoter or a third party." See supra, ¶ 7.

<sup>61</sup> See e.g., Eugene Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 *The Journal of Finance Economic Literature* (May 1970), pp. 383-417.

<sup>62</sup> This assumption is widely discussed in academic literature on event studies, including the literature cited by Dr. Metz. See Metz Report, note 31, citing John J. Binder, *The Event Study Methodology Since 1969*, 11 *Review of Quantitative Finance and Accounting* (1995),

new information quickly and without bias. However, as Dr. Metz acknowledges, cryptocurrency markets, including the XRP market, are less efficient than many capital markets and incorporate new information into prices more slowly;<sup>63</sup> therefore, his event study methodology is unreliable. Indeed, Dr. Metz fails to establish over what time period, if ever, information is fully incorporated into XRP prices without bias.

28. Dr. Metz acknowledges that “[a]cademic researchers have found that the digital token markets, including the XRP market, are generally less informationally efficient than the stock market” and that his own analysis “is consistent with the academic literature in that, by one common measure of efficiency (serial correlation), the XRP market is not fully efficient during the period of interest.”<sup>64</sup> He further acknowledges that, to account for the lack of market efficiency, academic researchers often use multi-day event windows when conducting event studies on cryptocurrency prices.<sup>65</sup>

29. Although the use of longer event windows allows more time for new information to be fully incorporated into XRP prices, it also introduces the potential impact from other new information, as well as noise. Different types of information may take different amounts of time to be fully incorporated into prices. For example, if price reactions to certain announcements overshoot during the first few days before ultimately correcting, an event window that is too

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pp. 111-137 at p. 111. “In practice, event studies have been used for two major reasons: 1) to test the null hypothesis that the market efficiently incorporates information ... and 2) under the maintained hypothesis of market efficiency, at least with respect to publicly available information, to examine the impact of some event on the wealth of the firm’s security holders.” *Id.*, p. 111. (Emphasis added.)

<sup>63</sup> See Metz Report, ¶ 35.

<sup>64</sup> Metz Report, ¶ 35.

<sup>65</sup> See Metz Report, ¶ 37. The academic literature that Dr. Metz cites uses event windows as long as 20 days (ten before and after the event being analyzed). See *id.*, note 42.

short and only includes the overshooting but not the correction will result in a biased estimate of price reaction.

30. For his analysis, Dr. Metz uses a 3-day window, with 1-day and 7-day window sensitivities. Dr. Metz does not, however, establish over what time period, if ever, information is fully incorporated into XRP prices without bias. As a result, his entire event study methodology is unreliable.

**D. Dr. Metz Fails to Provide Any Explanation As to Why His Event Study Methodology Would Shed Any Light On Whether XRP Holders are Engaged in a “Common Enterprise” with Ripple**

31. Dr. Metz has not explained the relationship between his conclusion that “XRP prices react to certain news and public statements about Ripple’s actions”<sup>66</sup> and the SEC’s claim that XRP is a security under the *Howey* Test. That is not surprising because the event study methodology used by Dr. Metz cannot and does not establish whether XRP holders are engaged in a “common enterprise” with Ripple, much less whether those holders were led to expect profits or returns generated solely or primarily from the entrepreneurial or managerial efforts of Ripple.

32. An event study is simply a statistical method that identifies when information about an asset is released and measures the contemporaneous market price response.<sup>67</sup> There are two primary reasons to use an event study: 1) to test the null hypothesis that a market is

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<sup>66</sup> Metz Report, ¶ 12.a.

<sup>67</sup> See e.g., Eugene Fama, Lawrence Fisher, Michael Jensen, and Richard Roll, *The Adjustment of Stock Prices to New Information*, 10 *International Economic Review* (1969), pp. 1-21; A. Craig MacKinlay, *Event Studies in Economics and Finance*, 35 *Journal of Economic Literature* (1997), pp. 13-39.

semi-strong efficient (i.e., to test whether market prices efficiently incorporate publicly available information); and 2) under the hypothesis of a semi-strong efficiency, to measure the impact of certain events on market prices.<sup>68</sup> However, an event study cannot establish whether an asset is a security because, in an efficient market, asset prices will react to publicly available information about the asset—regardless of whether or not the asset is a security.<sup>69</sup> Although Dr. Metz claims that “[a]cademic researchers have applied the event study methodology to digital token markets,”<sup>70</sup> none of the literature that he cites to attempts to use an event study methodology to establish whether or not digital tokens are securities.<sup>71</sup>

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<sup>68</sup> See e.g., John J. Binder, *The Event Study Methodology Since 1969*, 11 *Review of Quantitative Finance and Accounting* (1995), pp. 111-137 at p. 111: “In practice, event studies have been used for two major reasons: 1) to test the null hypothesis that the market efficiently incorporates information ... and 2) under the maintained hypothesis of market efficiency, at least with respect to publicly available information, to examine the impact of some event on the wealth of the firm’s security holders.” See also, Ronald J. Gilson and Bernard S. Black, “Event Studies: Measuring the Impact of Information,” in *The Law and Finance of Corporate Acquisitions* (2nd Ed., The Foundation Press, 1995), Chapter 6, pp. 185-187.

<sup>69</sup> See e.g., Eugene Fama, *Efficient Capital Markets: A Review of Theory and Empirical Work*, 25 *Journal of Finance* (1970), pp. 383-417. In my academic publications, I have discussed how all available information about a firm will be reflected in the firm’s stock price in efficient capital markets. See e.g., Daniel R. Fischel, *Use of Modern Finance Theory in Securities Fraud Cases Involving Actively Traded Securities*, 38 *The Business Lawyer* (1982), pp. 1-20 at p. 4: “In an efficient capital market, such as American stock markets, [...] the market price of a firm’s stock will reflect all available information about the firm’s prospects.”

<sup>70</sup> Metz Report, ¶ 36.

<sup>71</sup> In fact, the literature that Dr. Metz cites is primarily concerned with testing whether digital token markets are efficient. See e.g., Wenjun Feng, Yiming Wang, and Zhengjun Zhang, “Informed Trading in the Bitcoin Market,” *Finance Research Letters* Vol. 26, 2018, pp. 63-70 at p. 68: “In this study, we use transaction-level data to investigate informed trading prior to Bitcoin events ... we find evidence of informed trading in the Bitcoin market ahead of cryptocurrency-related negative Bitcoin market events, and ahead of large positive events.” See also, Mohammad Hashemi Joo, Yuka Nishikawa, and Krishnan Dandapani,

33. From an economics perspective, the reasons why an event study cannot establish whether an asset is a security are easily demonstrated via simple thought experiments:

- (i) Companies can issue multiple types of securities, e.g., stocks and bonds. Numerous event studies have been conducted on stocks and bonds, and it is well established that (in most states of the world) stocks are more sensitive to new information about their issuers than bonds, given their position in the capital structure of a firm.<sup>72</sup> It is completely possible to conduct an event study where certain news about a company is significantly correlated with stock price changes but is not significantly correlated with bond price changes. However, if one were to follow the flawed logic of Dr. Metz's event study methodology and the SEC's position that XRP is a security, the company's bonds would be misclassified as non-securities.
- (ii) Companies can make announcements about their activities that provide

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"Announcement effects in the cryptocurrency market," *Applied Economics* Vol. 52, No. 44, 2020, pp. 4794-4808 at p. 4794: "The aims of this study are twofold. First, we examine market reactions during major event announcement periods using event study methodology. Second, we further investigate if the information diffusion allows arbitragers to have an opportunity to make positive profits even after the event announcement."

<sup>72</sup> See e.g., Larry Y. Dann, "Common Stock Repurchases: An Analysis of Returns to Bondholders and Stockholders," *J. Financial Economics* Vol. 9 (1981), pp. 113-138 ("In contrast with the returns to common stock and convertible senior securities, no significant announcement date returns are experienced by owners of straight debt and straight preferred stock."); Paul Asquith and E. Han Kim, "The Impact of Merger Bids on the Participating Firms' Security Holders," *J. Finance* Vol. 37, No. 5 (December 1982), pp. 1209-1228 ("The results show that while the stockholders of target firms gain from a merger bid, no other securityholders either gain or lose."); Narayanan Jayaraman and Kuldeep Shastri, "The Valuation Impacts of Specially Designated Dividends," *J. Financial and Quantitative Analysis* Vol. 23, No. 3 (September 1988), pp. 301-312 ("[W]e find that stock prices react positively to the announcements of specially designated dividends. In addition, our empirical evidence indicates that bond prices are not affected by SDD announcements."); Chris Veld and Yulia V. Veld-Merkoulova, "An Empirical Analysis of the Stockholder-Bondholder Conflict in Corporate Spin-Offs," *Financial Managements* (Spring 2008), pp. 103-124 ("Over a three-day event window, we find statistically significant abnormal returns of 3.07% for stocks and 0.11% for straight bonds.").

information about other companies.<sup>73</sup> Consider a hypothetical scenario where Company A and Company B generally have correlated earnings and where Company A typically releases earnings announcements before Company B. In such a scenario, an event study might find that Company A's earnings announcements are significantly correlated with price changes in Company B's stock. It might even show that Company B's stock price changes are more correlated with Company A's earning announcements than its own earnings announcements. However, that event study would not prove that investors in Company B stock are engaged in a common enterprise to share profits from the efforts of Company A.

- (iii) Companies routinely make announcements about their activities that provide information about overall market conditions. Such information may lead to statistically significant changes in the prices of assets held by third-party investors even though those investors have no claims on the cash flows or assets of the company. In other words, even though both the company and investors are affected by the change in asset prices, the parties are not engaged in a common enterprise to share profits or returns, so the asset is not a security. For example:

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<sup>73</sup> See e.g., Michael Firth, "The Impact of Earnings Announcements on the Share Price Behavior of Similar Type Firms," *The Economic Journal* 86 (June 1976), pp. 296-306 ("[I]nvestors use the information contained in the announcement of financial results to re-evaluate the share prices not only of the company whose results are being announced, but also of the closely competing companies.") and Stephen P. Baginski, "Intraindustry Information Transfers Associated with Management Forecasts of Earnings," *J Accounting Research* Vol. 25, No. 2 (Autumn 1987), pp. 196-216 ("[T]he management forecast of one firm (discloser) generates unexpected price reactions for firms (nondisclosers) similar to the forecaster.").

- o Suppose that DeBeers announces a new advertising campaign promoting diamonds and, following this announcement, the price of diamonds on the secondary market increases by a statistically significant amount. That price reaction would not establish that diamonds are a security issued by DeBeers because DeBeers is not engaged in a common enterprise to share profits or returns with holders of diamonds.
  - o Suppose that Exxon announces a new oil pipeline, which leads to statistically significant changes in the price of oil at each end of the pipeline. That price reaction would not demonstrate that oil is a security issued by Exxon because Exxon is not engaged in a common enterprise with third-party holders of oil.
- (iv) Consumer goods are not securities and yet, it is possible for news about a producer to result in price changes in the secondary market for its consumer goods. In such instances, those price reactions do not demonstrate that the owners of consumer goods are in a common enterprise to share profits from the efforts of producers.
- o For example, when professional sports teams win games, there is often an increase in the price of tickets to future games on the secondary market.<sup>74</sup>
  - o Similarly, news about financial distress at an automobile manufacturer can impact the secondary market price for that manufacturer's used cars.<sup>75</sup>

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<sup>74</sup> See e.g., Joris Drayer, Daniel A. Rascher & Chad D. McEvoy, "An examination of underlying consumer demand and sport pricing using secondary market data," *Sport Management Review* 15:4, pp. 448-460.

<sup>75</sup> See e.g., Ali Hortaçsu, Gregor Matvos, Chad Syverson, and Sriram Venkataraman, "Indirect Costs of Financial Distress in Durable Goods Industries: The Case of Auto Manufacturers," *The Review of Financial Studies* Vol. 26, No. 5, May 2013, pp. 1248-1290.



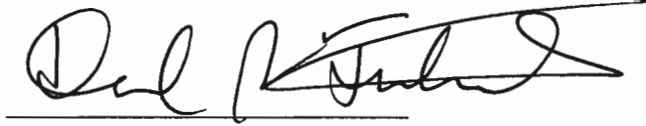
34. In summary, even if Dr. Metz’s analysis demonstrates that XRP prices reacted around the time of certain announcements made by Ripple,<sup>76</sup> such a finding cannot and does not establish whether XRP holders are engaged in a “common enterprise” to share profits or returns generated solely or primarily by the entrepreneurial or managerial efforts of Ripple.

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<sup>76</sup> As discussed above, Dr. Metz’s analysis cannot establish that XRP prices reacted solely or primarily to information about Ripple’s efforts because the announcements that Dr. Metz analyzed are confounded. See supra, Section IV.B.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on November 12, 2021.

A handwritten signature in black ink, appearing to read "Paul R. J. [unclear]", is written over a single horizontal line.

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

	# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
	With Significant		Without Significant	With Significant		Without Significant	With Significant		Without Significant	Event Days	Non- Event Days	With Significant Returns	Without Significant Returns
	Total [A]	Returns [B]	Returns [C]	Total [D]	Returns [E]	Returns [F]	Total [G]	Returns [H]	Returns [I]	[J]	[K]	[L]	[M]
<u>Range for All 20 Models Used by Dr. Metz</u>													
Minimum	1,725	76	1,540	90	15	64	1,635	61	1,474	10.5%	76.3%	15.2%	70.5%
Maximum	2,369	267	2,259	105	31	89	2,264	236	2,171	23.8%	89.5%	29.5%	84.8%
<u>Range for 12 Models Without ETH Returns</u>													
Minimum	2,369	110	2,102	105	16	74	2,264	93	2,028	10.5%	84.5%	15.2%	70.5%
Maximum	2,369	267	2,259	105	31	89	2,264	236	2,171	15.5%	89.5%	29.5%	84.8%
<u>Range for 8 Models With ETH Returns</u>													
Minimum	1,725	76	1,540	90	15	64	1,635	61	1,474	12.9%	76.3%	16.7%	71.1%
Maximum	1,726	185	1,650	90	26	75	1,636	161	1,575	23.8%	87.1%	28.9%	83.3%

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

	# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
	With Significant		Without Significant	With Significant		Without Significant	With Significant		Without Significant	Event Days [J]	Non- Event Days [K]	With Significant Returns [L]	Without Significant Returns [M]
	Total	Returns	Returns	Total	Returns	Returns	Total	Returns	Returns				
	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]				
<u>Model 1: Constant Mean Return</u>													
1-Sided Parametric	2,369	199	2,170	105	24	81	2,264	175	2,089	12.1%	<b>87.9%</b>	22.9%	<b>77.1%</b>
1-Sided Nonparametric	2,369	236	2,133	105	28	77	2,264	208	2,056	11.9%	<b>88.1%</b>	26.7%	<b>73.3%</b>
2-Sided Parametric	2,369	147	2,222	105	19	86	2,264	128	2,136	12.9%	<b>87.1%</b>	18.1%	<b>81.9%</b>
2-Sided Nonparametric	2,369	120	2,249	105	16	89	2,264	104	2,160	13.3%	<b>86.7%</b>	15.2%	<b>84.8%</b>
<u>Model 2: Account Growth</u>													
1-Sided Parametric	2,369	181	2,188	105	24	81	2,264	157	2,107	13.3%	<b>86.7%</b>	22.9%	<b>77.1%</b>
1-Sided Nonparametric	2,369	228	2,141	105	27	78	2,264	201	2,063	11.8%	<b>88.2%</b>	25.7%	<b>74.3%</b>
2-Sided Parametric	2,369	133	2,236	105	17	88	2,264	116	2,148	12.8%	<b>87.2%</b>	16.2%	<b>83.8%</b>
2-Sided Nonparametric	2,369	110	2,259	105	17	88	2,264	93	2,171	15.5%	<b>84.5%</b>	16.2%	<b>83.8%</b>
<u>Model 3: BTC Returns</u>													
1-Sided Parametric	2,369	209	2,160	105	25	80	2,264	184	2,080	12.0%	<b>88.0%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	258	2,111	105	31	74	2,264	227	2,037	12.0%	<b>88.0%</b>	29.5%	<b>70.5%</b>
2-Sided Parametric	2,369	167	2,202	105	22	83	2,264	145	2,119	13.2%	<b>86.8%</b>	21.0%	<b>79.0%</b>
2-Sided Nonparametric	2,369	127	2,242	105	18	87	2,264	109	2,155	14.2%	<b>85.8%</b>	17.1%	<b>82.9%</b>
<u>Model 4: BTC Returns + Account Growth</u>													
1-Sided Parametric	2,369	191	2,178	105	21	84	2,264	170	2,094	11.0%	<b>89.0%</b>	20.0%	<b>80.0%</b>
1-Sided Nonparametric	2,369	238	2,131	105	26	79	2,264	212	2,052	10.9%	<b>89.1%</b>	24.8%	<b>75.2%</b>
2-Sided Parametric	2,369	150	2,219	105	21	84	2,264	129	2,135	14.0%	<b>86.0%</b>	20.0%	<b>80.0%</b>
2-Sided Nonparametric	2,369	124	2,245	105	18	87	2,264	106	2,158	14.5%	<b>85.5%</b>	17.1%	<b>82.9%</b>
<u>Model 5: BTC Returns + ETH Returns</u>													
1-Sided Parametric	1,726	151	1,575	90	24	66	1,636	127	1,509	15.9%	<b>84.1%</b>	26.7%	<b>73.3%</b>
1-Sided Nonparametric	1,726	182	1,544	90	25	65	1,636	157	1,479	13.7%	<b>86.3%</b>	27.8%	<b>72.2%</b>
2-Sided Parametric	1,726	120	1,606	90	20	70	1,636	100	1,536	16.7%	<b>83.3%</b>	22.2%	<b>77.8%</b>
2-Sided Nonparametric	1,726	100	1,626	90	20	70	1,636	80	1,556	20.0%	<b>80.0%</b>	22.2%	<b>77.8%</b>

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

	# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
	With Significant		Without Significant	With Significant		Without Significant	With Significant		Without Significant	Event Days	Non- Event Days	With Significant Returns	Without Significant Returns
	Total [A]	Returns [B]	Returns [C]	Total [D]	Returns [E]	Returns [F]	Total [G]	Returns [H]	Returns [I]	[J]	[K]	[L]	[M]
<b>Model 6: BTC Returns + ETH Returns + Account Growth</b>													
1-Sided Parametric	1,726	121	1,605	90	21	69	1,636	100	1,536	17.4%	<b>82.6%</b>	23.3%	<b>76.7%</b>
1-Sided Nonparametric	1,726	164	1,562	90	23	67	1,636	141	1,495	14.0%	<b>86.0%</b>	25.6%	<b>74.4%</b>
2-Sided Parametric	1,726	97	1,629	90	19	71	1,636	78	1,558	19.6%	<b>80.4%</b>	21.1%	<b>78.9%</b>
2-Sided Nonparametric	1,726	80	1,646	90	19	71	1,636	61	1,575	23.8%	<b>76.3%</b>	21.1%	<b>78.9%</b>
<b>Model 7: BTC Returns + ETH Returns + XLM Returns</b>													
1-Sided Parametric	1,726	131	1,595	90	22	68	1,636	109	1,527	16.8%	<b>83.2%</b>	24.4%	<b>75.6%</b>
1-Sided Nonparametric	1,726	180	1,546	90	26	64	1,636	154	1,482	14.4%	<b>85.6%</b>	28.9%	<b>71.1%</b>
2-Sided Parametric	1,726	103	1,623	90	18	72	1,636	85	1,551	17.5%	<b>82.5%</b>	20.0%	<b>80.0%</b>
2-Sided Nonparametric	1,726	90	1,636	90	17	73	1,636	73	1,563	18.9%	<b>81.1%</b>	18.9%	<b>81.1%</b>
<b>Model 8: BTC Returns + ETH Returns + XLM Returns + Account Growth</b>													
1-Sided Parametric	1,726	118	1,608	90	20	70	1,636	98	1,538	16.9%	<b>83.1%</b>	22.2%	<b>77.8%</b>
1-Sided Nonparametric	1,726	170	1,556	90	22	68	1,636	148	1,488	12.9%	<b>87.1%</b>	24.4%	<b>75.6%</b>
2-Sided Parametric	1,726	92	1,634	90	17	73	1,636	75	1,561	18.5%	<b>81.5%</b>	18.9%	<b>81.1%</b>
2-Sided Nonparametric	1,726	76	1,650	90	15	75	1,636	61	1,575	19.7%	<b>80.3%</b>	16.7%	<b>83.3%</b>
<b>Model 9: Equal-Weighted Crypto Index</b>													
1-Sided Parametric	2,369	214	2,155	105	25	80	2,264	189	2,075	11.7%	<b>88.3%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	267	2,102	105	31	74	2,264	236	2,028	11.6%	<b>88.4%</b>	29.5%	<b>70.5%</b>
2-Sided Parametric	2,369	156	2,213	105	21	84	2,264	135	2,129	13.5%	<b>86.5%</b>	20.0%	<b>80.0%</b>
2-Sided Nonparametric	2,369	133	2,236	105	18	87	2,264	115	2,149	13.5%	<b>86.5%</b>	17.1%	<b>82.9%</b>
<b>Model 10: Equal-Weighted Crypto Index + Account Growth</b>													
1-Sided Parametric	2,369	196	2,173	105	22	83	2,264	174	2,090	11.2%	<b>88.8%</b>	21.0%	<b>79.0%</b>
1-Sided Nonparametric	2,369	258	2,111	105	27	78	2,264	231	2,033	10.5%	<b>89.5%</b>	25.7%	<b>74.3%</b>
2-Sided Parametric	2,369	144	2,225	105	19	86	2,264	125	2,139	13.2%	<b>86.8%</b>	18.1%	<b>81.9%</b>
2-Sided Nonparametric	2,369	126	2,243	105	17	88	2,264	109	2,155	13.5%	<b>86.5%</b>	16.2%	<b>83.8%</b>

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

	# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
	With		Without	With		Without	With		Without	Event Days [J]	Non- Event Days [K]	With Significant Returns [L]	Without Significant Returns [M]
	Significant		Significant	Significant		Significant	Significant						
	Total	Returns	Returns	Total	Returns	Returns	Total	Returns	Returns				
	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]				
<u>Model 11: Lagged XRP Returns</u>													
1-Sided Parametric	2,369	203	2,166	105	25	80	2,264	178	2,086	12.3%	<b>87.7%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	246	2,123	105	29	76	2,264	217	2,047	11.8%	<b>88.2%</b>	27.6%	<b>72.4%</b>
2-Sided Parametric	2,369	143	2,226	105	19	86	2,264	124	2,140	13.3%	<b>86.7%</b>	18.1%	<b>81.9%</b>
2-Sided Nonparametric	2,369	126	2,243	105	18	87	2,264	108	2,156	14.3%	<b>85.7%</b>	17.1%	<b>82.9%</b>
<u>Model 12: Account Growth + Lagged Variables</u>													
1-Sided Parametric	2,369	188	2,181	105	26	79	2,264	162	2,102	13.8%	<b>86.2%</b>	24.8%	<b>75.2%</b>
1-Sided Nonparametric	2,369	239	2,130	105	30	75	2,264	209	2,055	12.6%	<b>87.4%</b>	28.6%	<b>71.4%</b>
2-Sided Parametric	2,369	135	2,234	105	19	86	2,264	116	2,148	14.1%	<b>85.9%</b>	18.1%	<b>81.9%</b>
2-Sided Nonparametric	2,369	125	2,244	105	19	86	2,264	106	2,158	15.2%	<b>84.8%</b>	18.1%	<b>81.9%</b>
<u>Model 13: BTC Returns + Lagged Variables</u>													
1-Sided Parametric	2,369	205	2,164	105	25	80	2,264	180	2,084	12.2%	<b>87.8%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	251	2,118	105	28	77	2,264	223	2,041	11.2%	<b>88.8%</b>	26.7%	<b>73.3%</b>
2-Sided Parametric	2,369	162	2,207	105	21	84	2,264	141	2,123	13.0%	<b>87.0%</b>	20.0%	<b>80.0%</b>
2-Sided Nonparametric	2,369	139	2,230	105	20	85	2,264	119	2,145	14.4%	<b>85.6%</b>	19.0%	<b>81.0%</b>
<u>Model 14: BTC Returns + Account Growth + Lagged Variables</u>													
1-Sided Parametric	2,369	198	2,171	105	24	81	2,264	174	2,090	12.1%	<b>87.9%</b>	22.9%	<b>77.1%</b>
1-Sided Nonparametric	2,369	254	2,115	105	29	76	2,264	225	2,039	11.4%	<b>88.6%</b>	27.6%	<b>72.4%</b>
2-Sided Parametric	2,369	156	2,213	105	23	82	2,264	133	2,131	14.7%	<b>85.3%</b>	21.9%	<b>78.1%</b>
2-Sided Nonparametric	2,369	133	2,236	105	20	85	2,264	113	2,151	15.0%	<b>85.0%</b>	19.0%	<b>81.0%</b>
<u>Model 15: BTC Returns + ETH Returns + Lagged Variables</u>													
1-Sided Parametric	1,725	147	1,578	90	23	67	1,635	124	1,511	15.6%	<b>84.4%</b>	25.6%	<b>74.4%</b>
1-Sided Nonparametric	1,725	184	1,541	90	26	64	1,635	158	1,477	14.1%	<b>85.9%</b>	28.9%	<b>71.1%</b>
2-Sided Parametric	1,725	115	1,610	90	20	70	1,635	95	1,540	17.4%	<b>82.6%</b>	22.2%	<b>77.8%</b>
2-Sided Nonparametric	1,725	104	1,621	90	20	70	1,635	84	1,551	19.2%	<b>80.8%</b>	22.2%	<b>77.8%</b>

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

	# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
	With Significant		Without Significant	With Significant		Without Significant	With Significant		Without Significant	Event Days [J]	Non- Event Days [K]	With Significant Returns [L]	Without Significant Returns [M]
	Total	Returns	Returns	Total	Returns	Returns	Total	Returns	Returns				
	[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]				
<u>Model 16: BTC Returns + ETH Returns + Account Growth + Lagged Variables</u>													
1-Sided Parametric	1,725	136	1,589	90	22	68	1,635	114	1,521	16.2%	<b>83.8%</b>	24.4%	<b>75.6%</b>
1-Sided Nonparametric	1,725	179	1,546	90	25	65	1,635	154	1,481	14.0%	<b>86.0%</b>	27.8%	<b>72.2%</b>
2-Sided Parametric	1,725	99	1,626	90	20	70	1,635	79	1,556	20.2%	<b>79.8%</b>	22.2%	<b>77.8%</b>
2-Sided Nonparametric	1,725	95	1,630	90	19	71	1,635	76	1,559	20.0%	<b>80.0%</b>	21.1%	<b>78.9%</b>
<u>Model 17: BTC Returns + ETH Returns + XLM Returns + Lagged Variables</u>													
1-Sided Parametric	1,725	138	1,587	90	21	69	1,635	117	1,518	15.2%	<b>84.8%</b>	23.3%	<b>76.7%</b>
1-Sided Nonparametric	1,725	176	1,549	90	25	65	1,635	151	1,484	14.2%	<b>85.8%</b>	27.8%	<b>72.2%</b>
2-Sided Parametric	1,725	101	1,624	90	19	71	1,635	82	1,553	18.8%	<b>81.2%</b>	21.1%	<b>78.9%</b>
2-Sided Nonparametric	1,725	101	1,624	90	20	70	1,635	81	1,554	19.8%	<b>80.2%</b>	22.2%	<b>77.8%</b>
<u>Model 18: BTC Returns + ETH Returns + XLM Returns + Account Growth + Lagged Variables</u>													
1-Sided Parametric	1,725	131	1,594	90	21	69	1,635	110	1,525	16.0%	<b>84.0%</b>	23.3%	<b>76.7%</b>
1-Sided Nonparametric	1,725	185	1,540	90	24	66	1,635	161	1,474	13.0%	<b>87.0%</b>	26.7%	<b>73.3%</b>
2-Sided Parametric	1,725	100	1,625	90	19	71	1,635	81	1,554	19.0%	<b>81.0%</b>	21.1%	<b>78.9%</b>
2-Sided Nonparametric	1,725	98	1,627	90	18	72	1,635	80	1,555	18.4%	<b>81.6%</b>	20.0%	<b>80.0%</b>
<u>Model 19: Equal-Weighted Crypto Index + Lagged Variables</u>													
1-Sided Parametric	2,369	204	2,165	105	25	80	2,264	179	2,085	12.3%	<b>87.7%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	255	2,114	105	28	77	2,264	227	2,037	11.0%	<b>89.0%</b>	26.7%	<b>73.3%</b>
2-Sided Parametric	2,369	154	2,215	105	21	84	2,264	133	2,131	13.6%	<b>86.4%</b>	20.0%	<b>80.0%</b>
2-Sided Nonparametric	2,369	141	2,228	105	20	85	2,264	121	2,143	14.2%	<b>85.8%</b>	19.0%	<b>81.0%</b>
<u>Model 20: Equal-Weighted Crypto Index + Account Growth + Lagged Variables</u>													
1-Sided Parametric	2,369	203	2,166	105	25	80	2,264	178	2,086	12.3%	<b>87.7%</b>	23.8%	<b>76.2%</b>
1-Sided Nonparametric	2,369	266	2,103	105	30	75	2,264	236	2,028	11.3%	<b>88.7%</b>	28.6%	<b>71.4%</b>
2-Sided Parametric	2,369	152	2,217	105	23	82	2,264	129	2,135	15.1%	<b>84.9%</b>	21.9%	<b>78.1%</b>
2-Sided Nonparametric	2,369	144	2,225	105	21	84	2,264	123	2,141	14.6%	<b>85.4%</b>	20.0%	<b>80.0%</b>

**Exhibit 1****The Findings of Dr. Metz's "Select Categories" Test Do Not Imply that XRP Holders Profit Solely or Primarily from the Efforts of Ripple**

# of Trading Days			# of Event Days			# of Non-Event Days			% of Trading Days w/ Significant Returns		% of Event Days	
With Significant		Without Significant	With Significant		Without Significant	With Significant		Without Significant	Event Days	Non- Event Days	With Significant Returns	Without Significant Returns
Total	Returns	Returns	Total	Returns	Returns	Total	Returns	Returns			Returns	Returns
[A]	[B]	[C]	[D]	[E]	[F]	[G]	[H]	[I]	[J]	[K]	[L]	[M]

Notes and Sources: In this exhibit, days with "significant returns" refers to days that Dr. Metz classifies as "significantly positive." In his analysis, Dr. Metz classifies date t as "significantly positive" if any of its cumulative returns over the 1-, 2-, or 3-day event windows are statistically significant and positive and none of its cumulative returns over those windows are statistically significant and negative. See Metz Report, ¶ 63. In Models 5-8 and 15-18, Dr. Metz controls for the return of Ether (ETH), which only has pricing data beginning on August 7, 2015. For these models, Dr. Metz cannot estimate abnormal returns for earlier trading days and, therefore, he cannot test some of the earlier event days. See Metz Report, note 46. Dr. Metz's equal-weighted cryptocurrency index in Models 9-10 and 19-20 is an equal-weighted index across the returns of ADA, BNB, BTC, ETH and XLM subject to data availability. See Metz Report, ¶ 39. In Models 11-20, Dr. Metz regresses "XRP returns on date t on the control variables measured at t and one lag of XRP returns and the control variables" to "correct for [] autocorrelation[.]" Metz Report, note 50.

[A] - [B]: Per Dr. Metz's backup production, see "Model Results.xlsx" at tab 7-1.

[C] = [A] - [B] (Except for min-max ranges).

[D] - [E]: Per Dr. Metz's backup production, see "Model Results.xlsx" at tab 7-1.

[F] = [D] - [E] (Except for min-max ranges).

[G] = [A] - [D] (Except for min-max ranges).

[H] = [B] - [E] (Except for min-max ranges).

[I] = [C] - [F] (Except for min-max ranges).

[J] = [E] / [B] (Except for min-max ranges).

[K] = [H] / [B] (Except for min-max ranges).

[L] = [E] / [D] (Except for min-max ranges).

[M] = [F] / [D] (Except for min-max ranges).



**Exhibit 2****Event Days Analyzed in Dr. Metz's "Select Categories" Test May Be Confounded  
by Other Announcements On or Near the Event Day**

	# of Other Announcements Identified by Dr. Metz On or Near the Event Days Analyzed in the "Select Categories" Test			
	Minimum	Maximum	Median	Average
[1] Within +/- 10 Days of the Event Day	0	14	4	<b>5</b>
[2] Within +/- 7 Days of the Event Day	0	9	4	<b>4</b>
[3] Within +/- 3 Days of the Event Day	0	8	1	<b>2</b>

Notes and Sources: Dr. Metz identifies 514 events in total, but focuses his analysis on "news announcements in [] categories related more directly to XRP[.]" See Fischel Report, ¶ 10. In his "Select Categories" test, Dr. Metz analyzes 105 event days with announcements in any of the following categories: (1) Milestones, (2) Trading Platform Listings, (3) Customer & Product Developments, (4) Ripple Commercialization Initiatives, and (5) Acquisitions & Investments. See Fischel Report, ¶ 19. For each of the 105 event days analyzed in Dr. Metz's "Select Categories" test, we count the number of other announcements on or near the event day that were identified in Dr. Metz's Appendix C, which includes (a) any announcements on the same event day that were not analyzed in Dr. Metz's "Select Categories" test (for example, announcements that Dr. Metz categorized as Market Commentary & Company Overview) and (b) any announcements on the specified days before and after the event day.

## **APPENDIX A**

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### **PROFESSIONAL EXPERIENCE**

Lee and Brena Freeman Professor of Law and Business, University of Chicago Law School (1/84 – 12/2005, chair awarded in 7/89, emeritus as of 1/1/2006); Dean of Law School (1/99 – 2/01); Visiting Professor of Law, University of Chicago Law School (7/82 - 6/83).

Professor of Law and Business, Northwestern University School of Law (1/1/2006 – 5/2011); Professor, Kellogg School of Management (courtesy appointment, 1/1/2006 – 5/2011).

Jack N. Pritzker Distinguished Visiting Professor of Law, Northwestern University School of Law (6/02-6/03).

Professor of Law and Business, University of Chicago Graduate School of Business (7/87 - 6/90).

Director, Law and Economics Program, University of Chicago (1/84 - 6/91).

Assistant Professor of Law, Northwestern University School of Law (6/80 - 6/81); Associate Professor of Law, Northwestern University School of Law (6/81 - 6/82); promoted to full professor in 6/82.

Attorney with Levy and Erens, Chicago, Illinois (7/79 - 6/80).

Law Clerk for Associate Justice Potter Stewart of the United States Supreme Court (1978 - 1979).

Law Clerk for Judge Thomas E. Fairchild, Chief Judge of the Seventh Circuit Court of Appeals (1977 - 1978).

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President and Chairman, Compass Lexecon (formerly Lexecon).

### **AREAS OF SPECIALIZATION**

Securities and Financial Markets, Valuation and Financial Analysis, Bankruptcy and Financial Distress Litigation, ERISA Litigation, Class Certification, Damages, Corporate Governance.

### **PUBLICATIONS**

Payback: The Conspiracy to Destroy Michael Milken and His Financial Revolution, Harper Business (1995).

The Economic Structure of Corporate Law, Harvard University Press (1991) (with Frank H. Easterbrook).

### **ARTICLES**

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### **EDUCATION**

University of Chicago Law School, Chicago, Illinois; J.D. 1977, cum laude; Order of the Coif; Comment Editor, Vol. 44, University of Chicago Law Review; Approximately top 1% of the Class. Awarded Casper Platt Award for best paper written by a student of the University of Chicago Law School; awarded Jerome N. Frank Prize for excellence in legal writing while a member of the University of Chicago Law Review, 1975 - 1977. Studied law and economics with Richard Posner and other members of the faculty.

Brown University, Providence, Rhode Island; M.A. 1974 in American History.

Cornell University, Ithaca, New York; major-American History; minor-Economics; B.A. 1972

### **TESTIMONY**

Deposition of Daniel R. Fischel In Re: Straight Path Communications Inc. Consolidated Stockholder Litigation, In the Court of Chancery of the State of Delaware, C.A. No. 2017-0486-SG, (October 21, 2021).

Deposition of Daniel R. Fischel In Re: Abu Dhabi Investment Authority vs. Mylan N.V. and Mylan Inc., In the United States District Court, Southern District of New York, Civil Action No. 1:20-cv-01342-JPO, (August 18, 2021).

Deposition of Daniel R. Fischel In Re: Mylan N.V. Securities Litigation, In the United States District Court, Southern District of New York, Case No. 1:16-CV-07926 (JPO), (August 17, 2021).

Deposition of Daniel R. Fischel In Re: Hawaii Structural Ironworkers Pension Trust Fund, Individually and on Behalf of All Others Similarly Situated vs. AMC Entertainment Holdings, Inc., et al., In the United States District Court, Southern District of New York, Case No. 1:18-cv-00299-AJN-SLC, (August 12, 2021).

Deposition of Daniel R. Fischel In Re: Sjunde Ap-Fonden, et al, vs. General Electric, et al., In the United States District Court, Southern District of New York, Index No. 17-cv-08457 (JMF), (August 9, 2021).

Testimony of Daniel R. Fischel In Re: United States of America vs. Edward Bases and John Pacilio, In the United States District Court, Northern District of Illinois, Eastern Division, Docket No. 18 CR 48, (July 29, 2021).

Testimony of Daniel R. Fischel In Re: Ahmed D. Hussein vs. Sheldon Razin, Steven Plochocki, Quality Systems, Inc., And Does 1-10, Inclusive, In the Superior Court of California, County of Orange, NO. 30-2013-00679600, CU-NP-CJC (July 27, 2021).

Testimony of Daniel R. Fischel In Re: Tesla Motors, Inc. Stockholders Litigation, In the Court of Chancery of the State of Delaware, Consolidated Civil Action No. 12711-VCS (July 23, 2021).

Testimony of Daniel R. Fischel In Re: Huntsman International, LLC vs. Albemarle Corporation, Rockwood Specialties Group, Inc., and Rockwood Holdings, Inc., American Arbitration Association, AAA Case No. 01-17-001-4588 (May 10, 2021).

Testimony of Daniel R. Fischel In Re: Resolution Life L.P. and Resolution Life (Parallel) Partnership vs. GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc.; SNH Acquisition, LLC and Greg Lindberg, In the Supreme Court of the State of New York, Civil Division, Index Nos. 650575/19, 653258/19, (April 19, 2021).

Deposition of Daniel R. Fischel In Re: Matthew Sciabacucchi and Hialeah Employees' Retirement System vs. John Malone, et al., and Charter Communications, Inc., In the Court of Chancery for the State of Delaware, C.A. No. 11418-VCG, (April 16, 2021).

Deposition of Daniel R. Fischel In Re: Jeld-Wen Holdings, Inc. Securities Litigation, In the United States District Court for The Eastern District of Virginia, Richmond Division, Civil Action No. 3:20-cv-00112-JAG, (February 26, 2021).

Testimony of Daniel R. Fischel In Re: The Pacific Gas and Electric Company Administration of Stress Test Methodology Developed Pursuant to Public Utilities Code Section 451.2(b) and (2) Determination That \$7.5 Billion of 2017 Catastrophic Wildfire Costs and Expenses Are Stress Test Costs That May Be Financed Through Issuance of Recovery Bonds Pursuant to Section 451.2(c) and Section 850 et Seq.(U39E), Before the Public Utilities Commission of the State of California, Application No. 20-04-023, (December 15, 2020).

Deposition of Daniel R. Fischel In Re: Resolution Life L.P. and Resolution Life (Parallel) Partnership vs. GBIG Holdings, Inc. f/k/a Southland National Holdings, Inc.; SNH Acquisition, LLC and Greg Lindberg, In the Supreme Court of the State of New York, Index No. 650575/2019, (November 24, 2020).

Deposition of Daniel R. Fischel In Re: SH 130 Concession Company, LLC, Zachry Toll Road – 56 LP Cintra Texas 56 LLC et al. vs. Central Texas Highway Constructors, LLC, et al., In the United States Bankruptcy Court, Western District of Texas, Austin Division, Case No. 16-10262-TMD, Adversary No. 18-01030, (November 5, 2020).

Deposition of Daniel R. Fischel In Re: Ahmed D. Hussein versus Sheldon Razin, Steven Plochocki, Quality Systems, Inc., et al., In the Superior Court of the State of California, County of Orange, Case No. 302013-00679600 CUNPCJC, (October 22, 2020).

Deposition of Daniel R. Fischel In Re: Deutsche Bank National Trust Company, Solely in its Capacity as Trustee of the Harborview Mortgage Loan Trust Mortgage Loan Pass-Through Certificates, Series 2006-9, In the Supreme Court of the State of New York County of New York, Index No. 654208/2018 (September 25, 2020).

Testimony of Daniel R. Fischel In Re: Fairstone Financial Holdings Inc., J.C. Flowers IV L.P. and VP Canada Acquisition, L.P. vs. Duo Bank of Canada, Court File No. CV-20-00641857-00CL and Duo Bank of Canada vs. Fairstone Financial Holdings Inc., J.C. Flowers IV L.P. and VP Canada Acquisition, L.P., Court File No. CV-20-00643629-00CL, In the Ontario Superior Court of Justice, (September 11, 2020).

Testimony of Daniel R. Fischel In Re: AB Stable VIII LLC vs. Maps Hotels and Resorts One LLC, et al., In the Court of Chancery of the State of Delaware, C. A. No. 2020-0310-JTL (August 28, 2020).

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Deposition of Daniel R. Fischel In Re: Willis Towers Watson PLC Proxy Litigation, In the United States District Court for the Eastern District of Virginia, Alexandria Division, Master File No. 1:17-cv-1338-AJT-JFA (August 12, 2020).

Deposition of Daniel R. Fischel In Re: Forescout Technologies, Inc. et al. vs. Ferrari Group Holdings, LP, and Ferrari Merger Sub, Inc., et al., In the Court of Chancery of the State of Delaware, Civil Action No. 2020-0385-SG (July 13, 2020).

Deposition of Daniel R. Fischel In Re: Brigade Leveraged Capital Structures Fund Ltd. et al. vs. Kindred Healthcare, Inc., et al., In the Circuit Court of Chancery of the State of Delaware, Case No. 2018 0165 (February 5, 2020).

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Testimony of Daniel R. Fischel in iHeart Communications, Inc., f/k/a Clear Channel Communications, Inc. vs. Benefit Street Partners, et al., In the District Court of Bexar County, Texas, Cause No. 2016 CI 04006 (May 17, 2016).

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Deposition of Daniel R. Fischel In Re: Joseph W. and Helen B. Teague, Steven Allen Barker, Rita Strahowski, Swanee Beck, and Lifetime Partners of PTL, as representatives of a nationwide class consisting of 150,129 Lifetime Partners and of 27,839 persons who have partially paid for Lifetime Partnerships v. James O. Bakker, in the United States District Court for the Western District of North Carolina, Civil Action No. 3:87CV514, (June 28, 1996).

Deposition of Daniel R. Fischel In Re: Snapple Beverage Corporation Securities Litigation, in the United States District Court, Eastern District of New York, Master File No. CV 94-3647 (May 30, 1996).

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Deposition of Daniel R. Fischel In Re: Household Commercial Financial Services, Inc. a citizen of the states of Delaware and Illinois v. Julius Trump, a citizen of the State of Florida, Edmond Trump, a citizen of the state of Florida, James M. Jacobson, a citizen of the State of New York, and Parker, Chapin, Flattau & Klimpl, a citizen of the states of New York and New Jersey, in the United States District Court, for the Northern District of Illinois Eastern Division, 92 C 5010 (February 1, 1996).

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Testimony of Daniel R. Fischel In Re: Peter M. Schultz and Pamela A. Schultz v. Rhode Island Hospital Trust National Bank, N.A., et al., United States District Court, District of Massachusetts, Civil Action No. 88-2870-T (February 16, 1994).

Deposition of Daniel R. Fischel In Re: Henry T. Endo, et al. v. John M. Albertine, et al., United States District Court, Northern District of Illinois, Eastern Division, No. 88 C 1815 (November 11 and 12, 1993; October 28, 1993).

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Reply Affidavit of Daniel R. Fischel In Re: Columbia Securities Litigation, United States District Court Southern District of New York, 89 Civ. 6821 (LBS) (August 30, 1993).

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Deposition of Daniel R. Fischel In Re: Amos M. Ames, Helen M. Ames, Robert F. Bourke, Louise L. Bourke, Leo E. Corr, April C. Corr, Wence M. Horak, Ruth Horak, Robert T. Freas, Maurita Freas, Bruce Fink, Jr., William H. Jones, Candace A. Jones, Richard Paul, William L. Paul, Carole Paul, Steven J. Paul, Best Power Technology, Incorporated, and Best Power Technology Sales Corporation, in the State of Wisconsin, Circuit Court, Juneau County, Consolidated Case Nos. 92-CV-31, 92-CV-32 (January 26, 1993).

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Deposition of Daniel R. Fischel In Re: Raymond Snyder, Individually and on behalf of all those similarly situated v. Oneok, Inc., et al., in the United States District Court, Northern District of Oklahoma, Civil Action No. 88 C 1500 E (October 15 and 16, 1992).

Deposition of Daniel R. Fischel In Re: Melridge, Inc. Securities Litigation, Consolidated Actions, United States District Court, District of Oregon, Master File No. CV87-1426-JU and Nos. 387-06589-P11, 88-05-JU, 88-221-JU, 88-0699-PA, 88-1266-JU (September 17, 1992; July 25 and 26, 1991).

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Deposition of Daniel R. Fischel In Re: Jennifer A. Florin and Alan L. Mundt, on behalf of themselves and all others similarly situated v. Wesray Capital Corp., Citizens and Southern Trust Company, a subsidiary of Citizens and Southern Corporation, Robert K. Barton, Leonard S. Gaby, Allen G. Lacoe, Robert A. Magnusson, Anthony A. Saliture, Harlan B. Smith, Thomas F. Stutzman, Raymond G. Chambers, Frank E. Richardson, E. Burke Ross, Jr., William E. Simon and Frank W. Walsh, Jr., in the United States District Court, Western District of Wisconsin, Civil Action No. 91C-0948 (August 12, 1992).

Deposition of Daniel R. Fischel In Re: Pearl Newman, Shanna Lehmann & Athanasios Tsivelekidis, on their own behalf and on behalf of all other persons similarly situated v. On- Line Software International, Inc. Jack M. Berdy, John C. Crocker, Richard A. Granger, Richard R. Holtmeier, Michael S. Juceam, Edward J. Siegel, Howard P. Sorgen and Richard Ward, United States District Court, District of New Jersey, Consolidated Civil Action Nos. 88-3247, 88-3411 (July 28 and 29, 1992).

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Deposition of Daniel R. Fischel In Re: Martin Kaplan and Selma Kaplan, on Behalf of Themselves and All Others Similarly Situated v. VICORP Restaurants, Inc., Charles R. Frederickson, Robert S. Benson,

Emerson B. Kendall, Robert T. Marto and Johyn C. Hoyt, United States District Court, District of Colorado, Civil Action No. 90-C-2182 (February 11, 1992).

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Affidavit of Daniel R. Fischel In Re: Gillette Securities Litigation, United States District Court, District of Massachusetts, Civil Action No. 88-1858-K (October 7, 1991)

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Deposition of Daniel R. Fischel In Re: Jennie Farber on behalf of herself and all others similarly situated v. Public Service Company of New Mexico; Jerry D. Geist; John P. Bundrant and Albert J. Robison, United States District Court for the District of New Mexico, CIV 89-456 JB WWD (April 17 and 18, 1991).

Affidavit of Daniel R. Fischel In Re: Moise Katz, Frederick Rand, Elias Weissman, Richard D. Morgan, Marion R. Morgan and Mortimer Schulman v. Raymond A. Hay, United States District Court, Southern District of New York, No. 86 Civ. 5640 (JES) (March 29, 1991).

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Deposition of Daniel R. Fischel In Re: Ellen Rudd, on behalf of herself and all others similarly situated, and Mayer Corporation on behalf of themselves, and all others similarly situated, and Louis Brandt, and Israel Baker, Jay R. Kuhne, Pininfarina Corp., and American Transfer Co., on behalf of themselves and all others similarly situated v. Kirk Kerkorian, et al., Superior Court of the State of California, County of Los Angeles, Nos. CA 000980, CA 000981, CA 001017, CA 620279 (June 21, 1990).

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Deposition of Daniel R. Fischel In Re: Norman Kamerman, Shirley Brown, Edward Rosen, Lexim Investors Corp., and Dohsa Anstalt, on behalf of themselves and all others similarly situated, and Barnett Stepak v. Saul Steinberg, Reliance Group Holdings, Inc., Reliance Group, Inc., Reliance Financial Services corp., and Reliance Insurance Company, United States District Court, Southern District of New York, No. 84 Civ. 4440 (September 13, 1989).

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Testimony of Daniel R. Fischel In Re: Tessie Wolfson, et al. v. Frederick S. Hammer, and Meritor Financial Group, United States District Court for the Eastern District of Pennsylvania, Civil Action No. 87-8471 (June 20, 1989).

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Deposition of Daniel R. Fischel In Re: Susan Rothenberg, as Custodian for Stephen J. Rothenberg v. Charles E. Hurwitz, United Financial Corporation, United Savings Association of Texas, et al., United States District Court for the Southern District of Texas, Houston Division, Civil Action No. H-86-1435 (March 30, 1989).

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Deposition of Daniel R. Fischel In Re: William Steiner, et al. v. Whittaker Corporation, et al., Superior Court of the State of California for the County of Los Angeles, No. CA000817 (December 7, 1988).

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#### **OTHER ACTIVITIES**

Member, American Economic Association, American Finance Association.

Former Member of the Board of Overseers of the Becker-Friedman Institute at the University of Chicago.

Former Advisor to the Harvard Program on Corporate Governance at Harvard University. Former

Member, Board of Directors, Center for the Study of the Economy and the State. Former Member,

Mid-America Institute Task Force on Stock Market Collapse.

Have acted as a consultant and/or advisor to the New York Stock Exchange, the National Association of Securities Dealers, the Chicago Board of Trade, the Chicago Board Options Exchange, the Chicago Mercantile Exchange, the New York Mercantile Exchange, the Federal Trade Commission, the Department of Labor, the Securities and Exchange Commission, the Canadian Securities and Exchange Commission, the United States Department of Justice, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, the Federal Housing Finance Agency, and the Office of Thrift Supervision.

Referee, Journal of Financial Economics, Journal of Law and Economics, Journal of Legal Studies.

Participant and speaker at multiple conferences on the Economics of Corporate, Securities and Commodities Law and the Regulation of Financial Markets.

Former Chairman, American Association of Law Schools' Section on Law and Economics.



## **APPENDIX B**

### **Materials Relied Upon**

#### **Legal Documents & Expert Reports**

Expert Report and Exhibits of Albert Metz, Ph.D., October 4, 2021

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***All other documents cited in this report and exhibits and appendices.***